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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 138/2019**
STATE

.....Petitioner
Through: Mr. Utkarsh, Ld. APP for the State
along with W/SI Ingkumnaro, P.S.
New Ashok Nagar.

versus

SUNIL KUMAR

.....Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
07.05.2025

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CRL.L.P. 138/2019

1. A Petition under Section 378(3) Cr.P.C has been filed seeking Leave to Appeal to challenge the Judgement dated 28.09.2018 vide which the Respondent Sunil Kumar has been acquitted.
2. It is submitted that there were three Complainants/eye-witnesses, out of whom two somewhat did not support the case of the Prosecution, but the third Complainant who was examined as PW3 fully supported the case of the Prosecution. Her testimony has been completely overlooked while acquitting the Respondent. Hence, the Leave to Appeal has been sought.
3. For the reasons stated, the above Leave to Appeal is allowed.

CRL.A. _____/2025 (To be numbered by the Registry)



4. A Criminal Appeal under Section 378(1) Cr.P.C has been filed on behalf of State/Appellant against the Judgment dated 28.09.2018 vide which the Respondent has been acquitted under Section 354A IPC in case FIR No.412/2014 P.S. New Ashok Nagar, District East, Delhi.
5. Briefly stated, the three Complainants/Prosecutrix gave a joint Complaint that they used to come together from Sector-7, Noida for their job. On 11.04.2014 at about 08:30 A.M, while they were going to their place of work, they reached near Public Toilet, where they found one person who claimed his name to be Sunil and a resident of Jhuggis, stood naked and make obscene gestures at them.
6. On their Complaints, FIR under Section 354A IPC was registered.
7. After due investigations, Chargesheet was filed.
8. The statements of the three Prosecutrix and other prosecution witnesses were recorded. Thereafter, the statement of the Respondent/Accused was recorded under Section 313 Cr.P.C, wherein he pleaded his innocence.
9. The learned M.M, noted that the two Complainants i.e. PW1 and PW2 turned hostile and benefit of doubt was given to the Respondent, who was acquitted vide Judgment dated 28.09.2018.
10. Aggrieved by the said acquittal, the present Appeal has been preferred by the State wherein the impugned Judgment has been challenged on the ground that though PW1 had failed to support the case of the Prosecution, but PW2 had deposed against the Respondent in her Examination in Chief, though in her deferred cross-examination she denied the identity of the Accused.
11. The PW3 was also a victim of the alleged offence, who fully



supported the case of the Prosecution. Despite the consistent testimony of PW3, it has not been considered while granting benefit to the Respondent.

12. Hence, the impugned Judgment is liable to be set aside.

13. **Submissions heard and record perused.**

14. The entire case of the Prosecution hinged on the evidence of the three Prosecutrix/Victims. PW1, Ms. 'S' while admitted having made a Complaint Ex.PW2/A, but completely denied the identity of the Accused. She denied that he was the person who used to daily tease and misbehave with her while they used to go to their office. She denied the specific suggestion made to her by the learned Prosecutor that the Respondent used to stand outside the non-functional toilet completely naked and make vulgar gestures. The PW1 has, therefore totally failed to support the case of the Prosecution.

15. The second victim PW2 Ms. 'P' though deposed that one person used to undress himself and make vulgar gestures for which they had made the Complaint Ex.PW2/A, and also stated that he was arrested by the Police officials and his name was disclosed as Sunil, but in her cross-examination she completely turned hostile in regard to identity of the Respondent. She deposed that after making the Complaint on 11.04.2014, she never ever was called to the Police Station and had never seen Accused Sunil in the Police Station. So much so, she also denied that she had seen any person misbehaving with them on the date of alleged incident. PW2, therefore, though had somewhat supported the allegations of sexual harassment in her Examination-in-Chief, but totally failed to support the identity of the Respondent.

16. The third victim PW3 Ms. 'SN' in her testimony, while supporting the



averments made in the Complaint of one person daily harassing them by standing naked and making vulgar gestures and they having made a Complaint to the PCR at No.100, from where they were taken to the Police Station, stated that the Respondent flee from the spot leaving his motor-cycle behind. She further stated that the Respondent present in the Court was the Accused. She was the only witness who deposed about the identity of the Respondent.

17. Pertinently, it is a consistent case of the prosecution that the Respondent ran away from the scene of incident. According to the Prosecution, the Accused was arrested subsequently on 29.04.2014. Unfortunately, the I.O has not been examined as a witness and there is no explanation forthcoming as to how Respondent was traced and arrested. There is also no evidence to the effect that this Respondent was ever got identified by the three witnesses. Pertinently, PW2 has stated that she was never called to the Police Station after the Complaint having been made by them in the Police Station. The testimony of the three witnesses is somewhat contradictory, but the most important aspect is that the identity of the Respondent has not been established by the Prosecution by leading any evidence whatsoever. There is no evidence as to how the respondent was apprehended; when did the three witnesses identified him during the investigations. Identification of the respondent for the first time in the Court by PW-2, cannot be considered as absolutely reliable, especially when the other two victims have resiled from identity of the respondent.

18. For the reasons stated, it is held that the Respondent has been rightly acquitted by giving a benefit of doubt. There is no merit in the present Appeal, which is hereby dismissed.



19. The Appeal stands disposed of along with the pending Application(s).

NEENA BANSAL KRISHNA, J

MAY 7, 2025/va